

REMARKS

By this Amendment, the inventor has made a bonafide effort to reply to each of the points made by Examiner Legesse in the lengthy Office Action mailed July 28, 2004.

With reference to typewritten Page 2 of the Office Action, the Examiner has utilized the entire page in order to set forth her displeasure with the fact that in original Claim 9 of this application, the Applicant had recited that the generally U-shaped portion of the instant golf swing trainer is smoothly curved. It is true that while drawing Figures 2 and 7 clearly reveal the entirety of the instant golf swing trainer, these figures do show definite bends of the type defined in original Claim 8. It obviously does not involve a high degree of skill or imagination to visualize the appearance of the U-shaped portion devoid of bends, and the Applicant cannot understand why the Examiner gave the admonition against the inclusion of new matter, and the steps to be taken to avoid abandonment of this application.

Since in the mind of the Applicant this issue is not nearly as prominent as it apparently exists in the Examiner's mind, the Applicant has decided to delete Claim 9 without prejudice, in order that the prosecution of this case can continue without unnecessary attention being given to this detail.

With reference to Page 3 of the July 28th Office Action, the Examiner has, quite amazingly, rejected most of the claims of this case as anticipated by the Schneller U.S. Patent No. 5,127,650, which is captioned "Golf Putter and Method for Putting." Although the Applicant has now taken the step of canceling his original independent Claims 1, 5 and 12, replacing them with new independent Claims 18, 20 and 22 respectively, in order to increase the distinctiveness of this invention over the Schneller Golf Putter,

it is nevertheless most pertinent to discuss what Schneller teaches and what he does not teach.

First of all, the Applicant is firmly of the opinion that the Examiner manifestly erred in rejecting this group of claims under 35 U.S.C. §102(b) as anticipated by Schneller, which is a reference entirely remote from the spirit, structure or intended use of the instant invention.

35 U.S.C. 102(b) involves a strong rejection, intended to be used when an Examiner has discovered a reference that fully meets the terms of the Patent Claims under consideration. The clear applicability of a reference allegedly fully meeting the terms of a patent claim should be manifestly apparent, with detailed explanations on the part of the Examiner being entirely unnecessary.

With reference to the Specification of Schneller, this patentee described near the bottom of Column 1 of his patent that in the practice of the Schneller invention, the golfer is encouraged to maintain the upper end of the putter in a "substantially stationary position, while imparting the power and direction to the putter solely by the use of the lower hand moved through an arc in the direction of the intended putt."

In stark contrast, the instant invention is not a putter, but is a training device designed to interact, in a manner carefully described in the Specification of this case, with the forearms of a golfer. This novel and quite distinctive device serves to teach a golfer to improve his or her swing, being unrelated to putting. It is to be noted that the following is stated on Page 7 of the Specification of the instant application:

"My dynamic golf swing trainer is advantageously configured to in effect force the golfer to maintain his

or her hands, arms, shoulders and hips in a desirable and effective relationship during the entire swing of a golf club."

Diverting for the moment to Column 4 of the Schneller Specification, that patentee mentions in lines 43 through 45, that the extension 51 of the upper end of his device involves a "question mark-shaped handle 52" that is described as being easy to hold in a stationary position. The patentee describes that in accordance with this construction, this handle portion 52 enables the golfer to make a "proper pendulum stroke."

Back to the first page of the Schneller Specification, the patentee describes near the bottom of Column 1 that four fingers of the upper hand loosely grip the top of the club with the knuckles facing away from the body. The patentee thereafter describes in Column 2, beginning in line 15 that "Maintaining the top of the putter in a substantially stationary position has been found to be one of the most important aspects of successfully using a pendulum type stroke for putting."

Obviously the question mark-shaped handle 52 has absolutely no relationship with the forearms of a golfer, and it manifestly has no particular relationship with the handle 12 of the Schneller putter!

One does not have to be a professional golfer or even know very much about the game of golf to understand the following:

1. Whereas the instant invention is a dynamic golf swing training device for assuring proper wrist and club face positions throughout the swing of a golf club, and being a device not intended for striking a golf ball, the Schneller device is strictly a particular type of golf putter,

having no relationship whatsoever with training a golfer to utilize proper wrist action and attain proper club face positions through the swing of a golf club.

2. Whereas the Examiner is trying to equate the configuration of the Schneller golf putter with the configuration of the instant device, the unmistakable facts are that Schneller accurately describes in his Column 4 that his device involves a question mark-shaped handle 52. In the opinion of the Applicant, it would be difficult for any person making an objective study of Schneller's Figures 5 and 7 to disagree with the portion 51 being limited to a question mark shaped construction.
3. On Pages 3 through 5 of the Office Action the Examiner has made a serious effort to revise the clear teachings of Schneller, and this patentee's Figure 7. She is striving to redefine Schneller's putter to supposedly involve a configuration in the nature of the Applicant's generally U-shaped portion that was recited, for example, in original independent Claim 5, and then set forth in additional detail in the claims dependent from independent Claim 5. The Examiner has been very creative - extremely creative in fact - in redefining the question mark-shaped handle 52 in an effort to allegedly find a basis for considering that Schneller's Figure 7 has first, second, third and fourth sectors. In the opinion of the

Applicant, there is no basis whatever to be found in the Schneller patent for considering that the Schneller patent in any way teaches the first, second, third and fourth sectors corresponding to what the Examiner has called out in handwriting on Page 6 of the Office Action with regard to Schneller's Figure 7. What possible purpose would be served by such a reconfiguring of the Schneller putter? Does the Examiner somehow maintain that Schneller could teach a golfer to maintain his or her hands, arms, shoulders and hips in a desirable and effective relationship during the entire swing of a golf club?? Unquestionably, Schneller teaches nothing more, nothing less than a putter configuration, in which the question mark-shaped handle 52 resides in a 90° relationship with the shaft 12.

The Applicant is mindful that in a first Office Action, an Examiner is often permitted to rather liberally interpret the breadth of the teachings contained in a selected patent reference, but the Applicant is strongly of the opinion in this instance that the Examiner has seriously overstepped when she rejected most of the claims of this case under 35 U.S.C. 102(b) as anticipated by the Schneller patent. Again, his patent relates to a putter intended to be swung in a pendulum type manner in striking a golf ball, rather than being a teaching device, not concerned with striking a golf ball, that is instead designed to interact with the forearms of a golfer in order to help him or her to achieve

desirable wrist action, such that a proper club face position can be consistently achieved.

On Page 7 of the Office Action, the Examiner rejected very detailed dependent Claims 10 and 15 under 35 U.S.C. §103(a) as unpatentable over Schneller. Although Schneller has no occasion to speak of desirable angles with respect to his question mark-shaped section 52, the Examiner is undeterred, and has stated that it would be an obvious matter of design choice to a person of ordinary skill in the art to provide an angle range of 15-35 degrees.

Despite the fact that the Applicant firmly disagrees with the way the Examiner has stretched the Schneller patent beyond all recognition, the Applicant has decided, in order to expedite the prosecution of this case, to cancel original Claim 1, and in effect to replace it with new independent Claim 18; to cancel original independent Claim 5 and in effect to replace it with new independent Claim 20; and to cancel original independent Claim 12, and in effect to replace it with new independent Claim 22.

With regard to the language of new independent Claim 18, from which dependent Claims 2 through 4 depend directly or indirectly, the Examiner may wish to raise the point that in the Specification of this application, it is not literally stated, in so many words, that the upstanding curved portion forms a substantially 180° bend. In answer to such a possible observation by the Examiner, the Applicant is strongly of the opinion that any person studying original Figure 2 of this application will agree that the upstanding curved portion forms a substantially 180° bend. In other words, this feature is inherent in this case as originally disclosed.

With regard to some additional new language, new independent Claim 18 differs in one way from original Claim 1 by referring to the end member that is spaced away from the shaft. The Examiner's

attention is invited to Page 14 of the Specification, wherein the end cap 39 is specifically mentioned.

Continuing with the same thought, new Claim 19 depends directly from new Claim 18 and recites that the end member is spaced between seven and nine inches away from the shaft. The Examiner will note on Specification Page 14 that this exact information is set forth in lines 22 and 23 of this page.

New independent Claim 20 not only recites the upstanding curved portion as being generally U-shaped and forming a substantially 180° bend, but also it recites that the upstanding curved portion resides in a plane disposed at an angle to the centerline of the shaft. This is an additional feature of construction that is obviously quite far removed from anything taught in the Schneller patent. New Claim 21, dependent from new Claim 20, recites the outermost end of the upstanding curved portion being spaced between seven and nine inches away from the shaft.

New independent Claim 22 also recites substantially the same distinctive features mentioned in the other two new independent claims, with this claim being followed by new Claim 23 dependent from Claim 22 and reciting the spacing between seven and nine inches from the shaft.

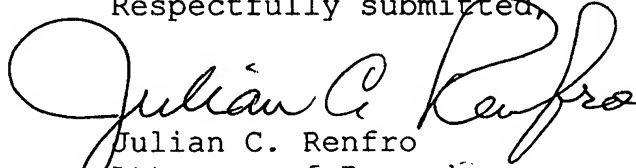
It is not believed necessary to extend the length of this reply in order to argue the distinctiveness of all of the claims remaining in this application over the Schneller putter and its question mark-shaped upper handle portion. The Applicant maintains that the Schneller putter cannot be described, even under the most liberal interpretation possible, as representing a proper basis for the rejection of any of the claims of this case.

The Applicant has made a bonafide attempt to advance the prosecution of this case and place it in condition for an early

allowance. No additional fee is believed to be necessary in connection with the revision of the claims of this case.

If the Examiner would find it useful to discuss the Applicant's efforts to date to place this case in condition for an early allowance, she is urged to contact the undersigned Attorney of Record at her early convenience, utilizing either of the telephone numbers set forth hereinbelow.

Respectfully submitted,

  
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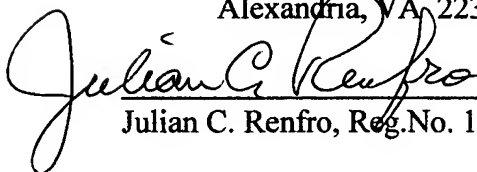
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Date

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